

The Construction of Subjects in the Colonial Political Economy of the Spanish Guinea¹

Alicia Campos Serrano

Grupo de Estudios Africanos

Universidad Autónoma de Madrid

The categorisation of people into ‘tribes’ and other clusters in order to assign them different rights was the main instrument of the colonial government throughout Africa. However, the distinction between ‘citizens’ and ‘subjects’ was the result of extended and differentiated historical trajectories. This paper inquires into the historical process that engendered the category of *indígena* in Spanish Guinea and maintains that the radical separation between colonists and colonisers emerged only gradually as the small African peasants fully participated in the colonial economy of cocoa and became serious competitors of the settled planters.

1. Introduction: colony and territory in the Spanish Guinea

The colonial situation is as good a starting point as any to understand the dynamics of autochthony, citizenship and exclusion. As is well known, during colonialism, the categorisation of peoples and relocation of resources were among the main tasks of colonial authorities. The primary objective of this paper is to explore the relations between both processes in the case of the small Spanish colony in the Gulf of Guinea.

¹ This paper is based on Alicia Campos Serrano, "Colonia, Derecho y Territorio en el Golfo de Guinea. Tensiones del colonialismo español en el siglo XX", *Quaderni Fiorentini per la Storia del Pensiero Giuridico Moderno*, 33, 2005.

The juridical differentiation of people amongst personal categories during colonial imperialism has been analysed by some authors through the basic distinction between citizens and subjects.² The former enjoyed the rights that were granted by the constitutional laws of the metropolitan state, whereas most colonised people could not claim such rights because they were governed indirectly through local authorities and subjected to revisited customary norms.

Certainly, this model eventually became a constitutive element of the colonial imaginary and was based on the perception of Africans as essentially 'tribal' individuals who belonged to differentiated communities that were governed by chiefs and whose personal freedoms were always subordinated to group necessities.³ Therefore, through indirect rule, the Europeans became the guarantors of a supposed African tradition and its immobility.

However, colonialism did not rigidify colonised societies, and social change became a key feature of colonialism, which was in part due to the contradictory nature of colonial rule.⁴ It is now known that Africans did not simply accept the role that colonisers assigned to them and that, as well as resisting, many of them tried to take advantage of new circumstances to increase their power, abolish old dependencies or transform their institutions into more favourable options for them. Some individuals actively participated in the reorganisation of their societies during European domination—not as simple collaborators but as representatives of certain local interests.⁵

This participation was especially dramatic in the economic domain, where Africans were considered cheap labourers, though many became small or even large-scale producers for the colonial markets. The argument of this article is that, in Spanish Guinea, the juridical distinction between citizens and subjects

² M. MAMDANI, *Citizen and Subject. Contemporary Africa and the Legacy of Late Colonialism*, Princeton NJ, Princeton University Press, 1996.

³ T. RANGER, 'The invention of tradition in colonial Africa', E. HOBBSBAWM and T. RANGER, *The invention of tradition*, Cambridge, Cambridge University Press, 1983.

⁴ On the contradictions of the colonial state, see B. BERMAN y J. LONSDALE, 'Coping with the Contradictions. The Development of the Colonial State, 1895-1914', in *Unhappy Valle. Conflict in Kenya and África*, James Currey / Heinemann Kenya / Ohio University Press, London / Nairobi / Athens, 1992; R.F. BETTS, 'Methods and institutions of European domination', *General History of Africa*, vol. VII, A. Adu BOAHEN (ed.), Unesco, Paris, Tecnos, 1985.

⁵ T. RANGER, *The invention of tradition revisited: the case of colonial África*, in T. Ranger & O. Vaughan, *Legitimacy and the State in Twentieth-Century África*, The Macmillan Press, London, 1993.

was strongly linked to the development of the colonial economy and the participation of Africans in it. Therefore, the establishment of such categories in colonial law did not appear clearly from the beginning of the colonial experience and became an instrument of monitoring and disempowerment through which the colonial state attempted to control the social processes, although they were not always successful.⁶

In the territories under Spanish colonialism in the Gulf of Guinea, trade, population movement and colonial rule generated a complex situation that was characterised by economic, social and juridical fragmentation. These dynamics can be followed through the history of colonial law and the successive regulations that were approved for the colony, especially those related to land and labour.⁷ The following section approaches this topic in more detail.⁸

2. Initial dispossession and juridical pluralism in Fernando Po

The access and use of land was a main cause of colonial tension in Africa. One of the aims of colonial occupation in the 19th century was precisely to secure direct control of territory and production, which was justified by the need to *mettre en*

⁶ In terms of Frederick COOPER, 'The distinction between colonizer and colonized, rather than being self-evident, had to be continually reproduced', and our case serves to demonstrate one of the ways in which this reproduction took place. F. COOPER, *Colonialism in Question. Theory, Knowledge, History*, University of California Press, Berkeley / Los Angeles / London, 2005, p. 49.

⁷ On colonial law and colonial law politics, see S. BERRY, *No Condition Is Permanent. The Social Dynamics of Agrarian Change in Sub-Saharan Africa*, The University of Wisconsin Press, Wisconsin, 1993; Id., 'Debate sobre la historia y el problema de la tierra en África', *ISTOR, Revista de Historia Internacional*, IV, 2003; M. CHANOCK, *Law, Custom and Social Order. The Colonial Experience in Malawi and Zambia*, Cambridge, Cambridge University Press, 1985; Id. *Paradigms, Policies and Property: A Review of the Customary Law of Land Tenure*, in K. MANN y R. ROBERTS, *Law in Colonial Africa*, Portsmouth / London, Heinemann / James Currey, 1994.

⁸ The main sources of this work were the Spanish public archive in Alcalá de Henares (Madrid): *Archivo General de la Administración*, Africa - Guinea collection (AGA Africa G); some contemporary studies in the *Biblioteca Nacional* (Madrid); and the norms approved and published for the Spanish Guinea as compiled by A. MIRANDA JUNCO, *Leyes coloniales*, Madrid, D.G. Plazas y Provincias Africanas, 1945 and J. M. PEÑA Y GOYOAGA, *Repertorio de Legislación Colonial. Años 1945-1954*, Madrid, 1955. The Royal Decrees (*Reales Decretos*) and Royal Orders (*Reales Órdenes*) are norms approved by the metropolitan government, and the Decrees (*Decretos*), Orders (*Órdenes*) and Ordinances (*Ordenanzas*) refer to norms approved by the general government of the colony, except where otherwise stated.

valeur the continent.⁹ Indeed, the colonial situation altered social relations throughout the territory.

However, the project of colonial territorial engineering was confronted by many limitations that were imposed by the colonial encounter. Such limitations derived from the reactions of inhabitants and the resources that were available to colonialists as well as the fluctuating interest of metropolitan economic groups in becoming involved in the continent. As a result, the reorganisation and even dispossession of lands was felt in various ways along time and space. The myriad uses and regulations of land during colonialism were well illustrated in the small territories of the Gulf of Guinea that corresponded to Spain in the European scramble for Africa.

The European presence on the island of Bioko (then known as Fernando Po by the colonisers) originated in the second decade of the 19th century, when the British tried to establish an antislavery base on the island. This development gave rise to a settlement of people of diverse origins, many of whom were liberated slaves from other parts of the West African coast who became known as *Fernandinos*.¹⁰ The Creole society that emerged was initially dedicated to the palm trade and shared the island with the former inhabitants, the so-called Bubis, who participated occasionally in this economy by exchanging products. When the Spanish government claimed sovereignty over Fernando Po in the middle of the century, it started governing a multicultural society with a colonial economy in transformation similar to the colonial settlements of Sierra Leone or Senegal.¹¹

The first general regulation of the Spanish colonisation, namely the *Real Decreto sobre colonización de las islas españolas del Golfo de Guinea* (December 1858), established the general government's prerogative to concede plots of land to particulars even if it did not hold military control or effective administration of

⁹ This phrase was the title of a book by the French Minister of Colonies for justifying the colonisation: Albert SARRAUT, *La mise en valeur des colonies françaises*, Payot, Paris, 1923. For the Spanish case, see the one written by the Spanish Guinea's Governor General: J. BONELLI RUBIO, *El problema de la colonización*, Dirección General de Marruecos y Colonias, Madrid, 1944.

¹⁰ M. Lynn, 'Commerce, Christianity, and the Origins of the "Creoles" of Fernando Po', *Journal of African Studies*, 25, 1984.

¹¹ On the first colonial society in Fernando Po, see A. MARTÍN DEL MOLINO, *La ciudad de Clarence*, Centro Cultural Hispano Guineano, Madrid-Malabo, 1993; Dolores GARCÍA CANTÚS, *Fernando Poo: una aventura colonial española 1778-1900*, PhD Dissertation, Universitat de Valencia, 2004.

the islands. A few years later, the first norm on land concessions was approved.¹² Then, the second general norm for the colony, which was approved in November 1868 by a provisional government in Madrid, considered 'property of the sons of the country the lands they grow at the present, and the pieces of ground occupied by buildings'.¹³ This declaration was maintained by colonial statutes until the end of the century.

The aims of these norms were to facilitate the distribution of lands amongst the families of Spanish settlers who were expected and encouraged to arrive¹⁴ and to position the state as the arbiter of this allocation through prescriptive property titles. However, the state was forced to recognise rights before conceding them to the African and European settlers who were already established as well as to the autochthon population.¹⁵ The modes of handling these two cases were starkly different.

The former group, who were considered 'particulars', were granted rights of property in the context of the European liberal state. The second group—the 'children of the country'—were not. Nevertheless, at the time, this situation was more reflective of a spatial and juridical coexistence than of discrimination. Most of the population of the island was not yet subjected to the Spanish government but rather to what Spaniards understood as their *usos y costumbres* (uses and customs). This expression did not yet refer to the indirect systems of government that were eventually established; instead, they signified the recognition of

¹² *Real Orden* 20/3/1864.

¹³ *Decreto* 12/11/1968, article 17.

¹⁴ The attraction of Spanish settlers was the objective of the *Real Decreto sobre Reglamento de colonización por familias españolas* (24/11/1894), which was suspended in 1900, and the *Plan para Favorecer la Inmigración Peninsular*, which was approved by the Governor General in 1907. J. M. CORDERO TORRES, *Tratado elemental de Derecho Colonial Español*, Instituto de Estudios Políticos, Madrid, 1941, pp. 195-197, 203.

¹⁵ Two years before the 1868 decree, a report by the Fernando Po Council of Government recognised that most of the island was unknown by the colonialists, and the state could only concede those lands that were not in use: '*En concepto de este Consejo debe entenderse por terrenos propios del Estado y disponibles para concederlos á los que lo soliciten todos aquellos que no se hallen concedidos por el Gobierno á empresas ó particulares ni cultivados por los indígenas; no siendo posible expresar el número de hectáreas de que el Gobierno puede disponer para estas concesiones pues aun cuando según la carta levantada por los misioneros en 1865 de que se dio cuenta al Gobierno de S.M. los pueblos que la Isla contiene son cincuenta y tres, ascendiendo sus poblaciones á 30 ó 35.000 habitantes; es lo cierto que la total carencia de caminos, la impenetrable maleza del bosque y demás condiciones especiales de esta localidad, hacen que no sea conocido el interior de la Isla, por cuyas razones nada se puede manifestar sobre este punto*' (*Informe del Consejo de Gobierno de Fernando Po*, 26/2/1866, AGA Africa G 154).

Fernando Po as a space of different juridical and political realities that only later became incompatible.¹⁶

Until the 20th century, the Spanish legislation could not aspire to regulate all existing situations of access and use of the land because it lacked the devices to impose it. However, this legislation would become the basis of the future colonial occupation.

3. Land and labour

From the 1880s onwards, *Fernandinos* and other African and European settlers, including former palm oil traders, started to open plots of land and cultivated cocoa for international markets'. Over time, the island became a single-crop farmer colony which produced goods for a protected market in Spain.¹⁷ During the last two decades of the 19th century, the government sought to control this process by way of legislation on concessions. A royal decree that was approved in 1880 limited them to 50 hectares, and subsequent norms did not allow concessions of more than 10 hectares to foreigners.¹⁸ Such normative maintained the principle of respect for the propriety, rights and necessities of the natives.

Meanwhile, the predominant conflicts did not concern the land but rather an intimately related issue: labour. The cocoa landowners consistently regarded the local Bubi population as would-be labourers for their plantations. This period witnessed an impulse to accomplish colonial military penetration of Fernando Po. However, the Bubi fiercely resisted the periodic efforts to convert them into manpower. At the same time, the politics of attraction of the colonial government and the demographic decay of this population posed limits to the violence that could be exerted on them.¹⁹

¹⁶ Proof is available in article 32 of the liberal decree of 1868 that is mentioned above, which imposes their religion, uses and customs on the whole population and not only on the indigenous: 'Así, los indígenas como los nacionales y extranjeros, serán respetados en su religión, usos y costumbres, siempre que no se opongan á las leyes de la moral y ordenorden público, ni excusen la obediencia que deben prestar á la Soberanía de España'.

¹⁷ J. J. DÍAZ MATARRANZ, *De la trata de negros al cultivo del cacao. Evolución del modelo colonial español en Guinea Ecuatorial, de 1778 a 1914*, Ceiba Ediciones, Barcelona, 2005.

¹⁸ *Real Decreto de Organización de la Colonia*, 26/11/1888; *Real Decreto* 17/2/1888, *Reglamento para la concesiones de terrenos*, 5/2/1891; *Reglamento para la concesión de terrenos*, 12/11/1897.

¹⁹ I. K. SUNDIATA, *From Slaving to Neoslavery. The Bight of Biafra and Fernando Po in the Era of Abolition, 1827-1930*, The University of Wisconsin Press, Madison, 1996. G. SANZ CASAS, *Política*

Therefore, workers in the commercial plantations arrived from various points on the Western African coast as well as from the Caribbean, where the end of slavery—far from generalising free, salaried work—had generated a social category with a vaguely defined personal status that was exposed to work as cheap labourers under largely forced labour conditions.²⁰ All these changes contributed to the intense movement of the population around Fernando Po and the existence of a human group whose living and legal conditions could rightly be conceived as neo-slavery.²¹

This development notwithstanding, the local populations were deeply affected by the political, cultural and economic dynamics that were provoked by the colonial presence on the island. They suffered two main consequences: their progressive displacement, which was forced by the establishment of large plantations, and the appearance of a class of small local farmers who adopted the strategy of cultivating commercial crops, especially cocoa, for the colonial markets.

Rather than cloistering the African population in niches of tradition, the colonial politics and growing agricultural commercialisation induced processes of change, economic accumulation and social differentiation. Afterwards, the same colonial authorities considered certain African initiatives as an optimal means of obtaining benefits from the colony while still maintaining legitimacy amongst the population. The law was one instrument with which they endeavoured to combine economic profitability and the social order.

In short, during the second half of 19th century, the colonial society of Fernando Po was not characterised by a clear distinction between colonisers and colonised

colonial y organización del trabajo en la isla de Fernando Póo: 1880-1930, Tesis Doctoral, Universidad de Barcelona, 1983; J. J. DÍAZ MATTARANZ, *De la trata*, cit., p. 122, 141-142.

²⁰ I. K. SUNDIATA, *From Slaving*, cit.. For a context nearby see F. COOPER, 'Conditions analogous to slavery: Imperialism and Free Labor Ideology in Africa', in F. COOPER, T. HOLT and R. SCOTT, *Beyond Slavery: Explorations of Race, Labor and Citizenship in Postemancipation Societies*, University of North Carolina Press, Chapel Hill, 2000.

²¹ I. K. SUNDIATA, *From Slaving*, cit., The scant norms on labour in this period include the *Real Orden sobre Reglamento de Servicio Doméstico*, 1/4/1863 and the *Reglamento de Negros Emancipados* 1864: 'Los emancipados serán en un todo reputados como libres, que han de prestar su trabajo por un tiempo y mediante un precio determinado, en justa retribución de la libertad que se les concede y de los gastos que esta concesión origina; pero como en el estado de esclavitud a que se les arranca no han podido adquirir el verdadero conocimiento de los derechos y obligaciones del hombre libre, quedan sujetos ala tutela del Gobierno hasta que sus facultades se hallen suficientemente desarrolladas'.

or between Europeans and indigenous peoples. In legal terms, the aforementioned 1868 decree, which was approved during a brief revolutionary period in Spain, granted the same rights to 'the indigenous subjected to Spain, the nationals and the foreigners who settle and take root' in the colony.²² The situation entailed more a multiplicity of social groups whose interests were sometimes contradictory and sometimes complementary. The Creole bourgeoisie, who were represented by the Local Council (*Consejo de Vecinos*) in Santa Isabel, were anxious for labourers but found the small Bubi owners to be good allies against the large corporations that were interested in investing in the island.²³ Some labourers regarded the autochthones as a society in which they could integrate through marriage and acquisition of small plots of land once they had completed their contract. Among European settlers, the Spanish government favoured Spaniards by imposing more conditions for settlement on foreigners.

4. Land and colonial law: the Royal Decree 1904

This unstable social situation was transformed by the progressive consolidation of the colonial state presence and the crisis of the cocoa economy at the beginning of the 20th century.²⁴ This period was characterised by two distinct yet interrelated phenomena. The first was the government's attempt to control the continental part of the colony, Río Muni, whose definitive territorial limits were demarcated by an agreement between Spain and France in 1900.²⁵ The second was the crisis of labour on Fernando Po plantations, where the Creole elite were progressively displaced by a class of powerful Spanish landowners.²⁶

²² *Decreto* 12/11/1868, article 16: 'los indígenas sometidos a España, los nacionales y los extranjeros que se avecinden y arraiguen en dichas posesiones'. B. CLAVERO, 'Bioko, 1837-1876: Constitucionalismo de Europa en África, derecho internacional consuetudinario del trabajo mediante', *Quaderni Fiorentini*, 35, 2007.

²³ See, for example, the report by the *Consejo de Vecinos* against the concession of 30,000 hectares to Mrs Goyri and Olózaga in an area with many Bubi small cocoa plantations, 17/5/1898 (AGA Africa G 155).

²⁴ 'Memoria sobre la producción de los territorios españoles del Golfo de Guinea y las reformas convenientes para acrecer sus rendimientos al Tesoro. Que el Excmo. Sr. Ministro de Hacienda presenta Don Joaquín Coll y Astrell, comisionado al efecto por Real Orden de 17 de enero de 1907', 24/8/1907 (AGA, Africa G 166, exp. 1, cit. by J.J. DÍAZ MATARRANZ, 'De la trata...', cit., p. 192.)

²⁵ The Treaty of Paris of 27 March 1900 between France and Spain definitively demarcates the limits between French Gabon and Spanish Guinea.

²⁶ I. K. SUNDIATA, *From Slaving*, cit., chap. 6.

At this time, the pressures on land and labour in the island were reflected in a normative inflation from the metropolitan and colonial governments. Along with a new framework law for the colony (*Estatuto Orgánico*),²⁷ they approved a Royal Decree on the Regime of Property²⁸ in 1904 and, in 1906, a Regulation of Indigenous Labour, as addressed in the next section. The state intended to intervene in the colonisation process as not only a supplier of land and labourers for settlers but also an arbiter and regulator of the occupation and exploitation of the territory.

The 1904 regime dictated that all cultivable lands that were not in use were state property, and it ratified the monopoly of the government to concede pieces of less than 100 hectares as property or to make concessions for more extensions'. Along with this kind of property, which was regulated similarly to that in Spain, the norm established the indigenous property (*propiedad indígena*; chapter IV), which was considered 'the lands usually occupied' by the naturals (art. 10). In this way, it (consciously) ignored many of the heterogeneous uses and relations of Africans with the territory, with which the private property of the European juridical imagination could not easily identify, and which made the forest a space of not only additional resources for agriculture but also potential mobility for only partially sedentary societies. The colonial state concluded that it would not recognise the character of rights to these practices, as such decision would have rendered it extremely difficult to share out the lands amongst the settlers. Therefore, limiting the indigenous property to the lands that were effectively occupied and cultivated—rather than assuring the rights of the population—sanctioned a true dispossession. However, as this paper demonstrates, this category did not even encompass all of the lands that were effectively used by Africans.

The indigenous property was not regulated by Spanish law but 'by the naturals' uses and customs' in relation to the 'nature and extension of the rights of the owner' as much as 'the ways of transmission to other indigenous'. However, the norm reserved the metropolitan government the possibility to adopt arrangements contrary to the custom by 'forbidding certain acts or modifying the character and the effects of others' (art. 13). At this point, the expression 'uses

²⁷ *Real Decreto* 11/7/1904. A. YGLESIA DE LA RIVA, *Política indígena en Guinea*, IDEA, Madrid, 1947; J.M. CORDERO, *Tratado*, cit.

²⁸ *Real Decreto sobre el Régimen de Propiedad en los Territorios del Golfo de Guinea*, 1904.

and customs' was not a reflection of the recognition of a juridical coexistence; rather, it aimed to integrate certain forms of African regulations into colonial law in a selective manner. Such selectivity and reinterpretation of customs were evident in the collective character that the indigenous property assumed, as it was not recognised for individuals but for tribes, small villages (*poblados*) and familiar groups.²⁹

This regulation also conferred certain Africans, those 'person(s) ordinarily invested by authority in the tribe, village or familiar group', many prerogatives concerning the sharing out and use of land, especially in relation to the agreements that were established with the settlers. These relations were doubly restricted since the indigenous property could not be transmitted to 'non-indigenous' without the permission of 'the competent judicial Authority' (art. 14). This regulation served to limit the capacity of Africans to enter into the colonial economic traffic as well as to protect them from the settlers' greed; in any case, it transformed the state into a forced intermediary in the colonial social relations.

The Regulation of the Regime of the Property, which was approved in 1905, dictated that the general governor would fix 'the portion corresponding to the tribe, the village or the indigenous familiar group, generally trying to reserve two hectares per individual'.³⁰ In this way, it presupposed the extension that each population occupied without taking the real use of the land into account. Furthermore, it did not grant rights to Africans, as the authorities only needed to *try* to safeguard a number of hectares. This process, which required demarcation and registration by a technician, was significantly delayed,³¹ and it advanced only when the settlers requested the concession of sizeable parcels of land on which African populations resided.³²

Therefore, the regulation of land was part of the process of gradual legal differentiation between indigenous and particulars. However, this distinction

²⁹ On the incorporation of customary law related to agriculture, see S. BERRY, *No condition*, cit.

³⁰ *Real Orden sobre Reglamento del régimen de la propiedad* 11/1/1905, article 13.

³¹ The obligation to mark out the indigenous property was reiterated on several occasions. A *Decreto* in 23/7/1907 tried to promote the creation of villages of at least 20 families to overcome the dispersion of the population. Thirteen years later, the government general again expressed its interest in marking out the villages and gathering the dispersed population (*Decreto* 31/5/1920)

³² The AGA contains numerous records of paralysed demands due to a lack of delimitation of the villages' property. See, for example, AGA Africa G 153, 577 exp. 3, and 585 exp. 1.

was applied not to persons but to the character of the tenure of land: communitarian by population groups or individual by commercial farmers. The local farmers' small plots (*finquitas*), which also produced goods for the colonial markets, did not enter into the category of indigenous property and were instead considered private property. Article 19 of the regulation states that the land concessions 'could be granted in favour of Spaniards, indigenous or not, of foreigners, and of juridical persons or Societies, whether national or foreigner', though few of these small pieces of land were registered or recognised formally by the colonial administration at this time.

Therefore, the European-indigenous dichotomy was not so clear and not yet as incapacitating as it would eventually become. The 1904 regime of property simultaneously recognised and established a diversity of economic and juridical situations regarding the tenure of land that did not necessarily refer to the distinction between colonisers and colonised. Moreover, there were always other distinctions, including that between Spanish and foreigners, which discriminated rights. In other juridical ambits, such as the criminal law, the distinction related to religion: while Christians were judged by Spanish law, non-Christians were subject to their 'uses and customs'.³³ Of course, the differentiation between men and women in the Spanish legislation was also reproduced. The distinction between citizens and subjects was clearly established only after the surveillance of the whole territory by the Spanish sovereignty at the end of the 1920s.

5. Labourers or small landowners?

Contradictions in the colonial regime regarding territorial and labour politics were expressed in various ways during the first decades of 20th century. In 1900, as a result of a strike by about 400 labourers from the West African coast and their subsequent repatriation at the expense of the colonial government, the landowners' need for manpower became a main element of colonial politics. At this time, international denunciations of labour conditions in Fernando Po were recurrent, especially from the British and, later, the League of Nations.³⁴

In this context, an agreement that was concluded between the Guinean colonial government and the Liberian government in 1905 for the import of workers

³³ *Real Orden* 23/7/1902.

³⁴ I. K. SUNDIATA, *From Slaving*, cit., p. 130-137; J. J. Díaz MATARRANZ, *De la trata*, cit., p.143-147.

produced few results.³⁵ Furthermore, the search for manpower re-situated the continental inhabitants as potential labourers.³⁶ On the coasts of Río Muni, the island landowners had already established informal systems of contract through European and African intermediaries, and they expected the state to facilitate this human traffic. The recognition of Spanish sovereignty by the rest of the colonial powers was considered an opportunity for this facilitation; however, the true course of history was again less favourable for colonialist interests, as later indicated.

In order to assure the work of the colonial economy and control the contracting process, a Regulation of Indigenous Labour was approved in 1906. This regulation established the *Curaduría Colonial* as an institutional mediator between employers and workers.³⁷ The *Curaduría Colonial* would give its conformity to all contracts, whether on the island or on the African coast, in a system that recognised few rights of the workers, who were considered more as contract objects than as contracting parties. The regulation also defined an obligation to work for all residents of Fernando Po with no 'property, trade or known legal occupation' to be 'hired either by particulars or by the state'.³⁸

The Bubis, who were autochthones of the island, were expressly excluded from this obligation, though they suffered 'obligatory service for local works of general interest' (*prestación personal*) that was introduced by the 1858 Royal Decree and reproduced in the 1904 *Estatuto Orgánico*.³⁹ In fact, from the last decade of 19th century, the governor general's edicts periodically compelled the local population to participate in public works as well as cocoa harvesting on large plantations.⁴⁰ Resistance to the *prestación personal* led to several small wars

³⁵ AGA Africa G 151.

³⁶ See the official inquiry in November 1903 among the Fernando Po farmers on the benefits to promote the immigration of labourers from other colonies or Río Muni (AGA Africa G 151).

³⁷ *Reglamento de trabajo indígena*, 1906. See B. CLAVERO, 'Bioko, 1837-1876', cit. The *Curador* had been created some years earlier in 1901 by the Colonial Budget (J.J. DÍAZ MATARRANZ, *De la trata*, cit.)

³⁸ *Real Orden* 6/8/1906, article 24.

³⁹ *Real Decreto* 11/7/1904, article 32.

⁴⁰ Governor general edicts (*bandos*) in 30/8/1907, 28/2/1908 and 21/4/1908 on the work of the Bubis in cocoa harvesting and public works. Petition by Fernando Po Chamber of Agriculture to the Governor General in 30/5/1910 demanding dispositions to oblige the Bubi population to work on the settlers' plantations: '*con lo que hará dos positivos bienes a la agricultura, evitándole el dolor de ver perderse la cosecha en los árboles; á los bubis encauzándoles en el trabajo que les llevará a la civilización*' (AGA Africa G 151). On these politics from 1911 to 1912, see C. PETIT, *Detrimentum Rei*

that only ended in 1917 with the total disarmament of the islanders.⁴¹ This period was therefore a time of violence and penetration by the colonial government, which also imposed taxes to oblige Africans to work for a salary in order to pay them.

Although the colonial government collaborated with the settlers in their search for workers, the state was also interested in the effective occupation and *mise en valeur* of all of the continental territory. This process increased the competition for and pressure on the already scarce workforce. The weakness of the colonial administration prompted the Spanish government to consider cheap and effective ways to continue this colonisation, and it opened a competition for renting the majority of Río Muni lands to a colonising private company in 1905.⁴² Ultimately, it was not a private company but rather the same state that advanced the military campaigns that subjugated all of Río Muni during the 1920s. The Spanish capitals that followed the path of the soldiers were invested mainly in timber extraction. Through its *Curaduría*, the colonial government could accomplish the role of primary intermediary between Fernando Po landowners and Río Muni labourers.

However, labour recruitment in Río Muni was heavily constrained by low demographic levels, new economic interests in colonising the continental area and the reactions of inhabitants. Effectively, the response of the continental population was similar to the previous reaction of the Bubi, who violently resisted their conversion into cheap workers and who, from the mid-1920s, took advantage of the colonial economy through the direct growth of commercial crops, especially coffee.⁴³ In fact, the integration of this territory into the colonial economy was completed only by small African producers, whose plantations mostly produced coffee but also supplied bananas and cocoa.

Publicae. Constitución de España en Guinea, in *Constitución en España: orígenes y destinos*, a cargo de J.M. Iñurrategui and J.M. Portillo, Centro de Estudios Políticos y Constitucionales, Madrid, 1998.

⁴¹ I. K. SUNDIATA, *From Slaving*, cit., pp. 167-171.

⁴² *Real Decreto* 9/3/1905 offered to concede 'the exploitation, sanitation and colonization' of the territory between the Campo and Muni Rivers, which was intended to delegate not only the military penetration but also the functions of the government and police, the opening of roads and other infrastructures, the collection of taxes and even the creation of schools and churches. Ultimately, the state did not reach an agreement on the distribution of competences with some of the interested companies, and this attempt failed. See AGA Africa G 153-156.

⁴³ I. K. SUNDIATA, *From Slaving*, cit., pp. 122-123.

The growing economic role of Africans in the colonial system was an issue that was intensively debated by the colonisers, who observed—with a certain ambiguity—the constantly increasing agricultural activity of autonomous peasants.⁴⁴ Major landowners feared that this activity could reduce the available workforce for their plantations. However, others benefitted from the use of small cultivators as intermediaries with the colonial markets. Moreover, some officials viewed African production on the basis of personal and familiar work as cheaper and more profitable compared to the production of the large estates.⁴⁵

In this context, labourers from other parts of Africa continued to arrive to Fernando Po, especially following the signature of a new covenant with Liberia's government in 1914. The authorities recognised that they could only assure that these workers would be granted access to land, sustenance and reproduction.⁴⁶ Upon the end of their contracts, some of them settled on the island by acceding to the land and assimilating into Bubi society through marriage.⁴⁷ In 1929, the *Cámara Agrícola de Fernando Poo* (Agriculture Chamber) proposed a reform of the land juridical regime 'in order to create inalienable indigenous familiar heritages as a way to promote such kind of population and to settle down the indigenous labourers who come to our possessions for the agricultural works'.⁴⁸ This complementarity between the African labour effort and their familiar

⁴⁴ On this debate, see, for example, the reports by the Public Works Official, the Santa Isabel *Consejo de Vecinos*, the Colonization Inspector and the Governor General in May-June 1900 as a result of a petition of 10,000 hectares (AGA África G 154).

⁴⁵ Engineer Eduardo Bosch, from the Colonial Section in the State Ministry, maintained the advisability to promote the small farmers' agriculture in a report of 8/4/1904: '*Actualmente los indígenas los Bubis, empiezan a solicitar terrenos para cultivarlos: piden pequeñas parcelas de media a una hectárea. Estos trabajarán y producirán sin necesidad de braceros venidos de fuera. (...) Los krumanes que han servido como braceros en las fincas y al terminar sus contratos se encuentran con algunos ahorros, solicitan también concesiones de terrenos pagando por ellos lo establecido: piden 1 ó 2 hectáreas. Estos son los que urge retener en la Isla*' (AGA África G 153).

⁴⁶ See the report by the engineer of the *Servicio Agronómico* in 1926 on a 2,000-hectare concession: '*que alrededor de los núcleos de viviendas de los braceros que empleen en la explotación, se dedique una extensión adecuada de terreno, para que en ella cultiven maíz, cacahuete, judías, frijoles, yucas, plátanos, malangas y hortalizas y todo cuanto se crea indispensable*' (AGA África G 581 exp. 4).

⁴⁷ The *Decreto* in 23/9/1919 tried to regulate the concession to indigenous from other colonies in Western Africa.

⁴⁸ Letter by the *Sección de Asuntos Coloniales* to the *Presidente de la Junta de Asuntos Judiciales*, both in the *Dirección General de Marruecos y Colonias*, reporting on a petition from the *Cámara Agrícola Oficial de Fernando Po*, 24/5/1929 (AGA África G 179, exp. 30).

agricultural production clearly connected the colonial regulations of work and land.⁴⁹

As a consequence of the periodic arrival of labourers to the Spanish colony, a strong differentiation emerged between the local population and the immigrant workers. The former could be compelled to complete forced labour for public works,⁵⁰ while some of the latter became small landowners. Nevertheless, there was consistently a substantial number of immigrant labourers who were crowded under the harsh conditions of farmworkers' living quarters and suffered the most from the violence of colonial domination. The juridical situation of these peoples was particularly frail because, despite the existence of norms regulating the 'indigenous work', they were not considered carriers of rights, and their access to the tribunal for claiming the application of labour legislation was highly difficult. Therefore, amongst indigenous subjects, the distinction between autochthones and foreigners constituted a basic social and juridical difference.

6. Abuse and protection: incapacitating the Africans

The increasing commercialisation of land and its products—and the participation of Africans in it—also induced transformations of the colonial law in relation to the access and use of land as well as the juridical capacity of colonisers.

The growing African small commercial plots were generally in a juridical limbo, as they were neither designated as the indigenous collective property that was defined in the 1904 Royal Decree nor registered as individual property.⁵¹ This

⁴⁹ As Sarah BERRY maintains, the colonial labour policies were as oppressive as they were ambiguous, as colonisers were as interested in maintaining the separation of the land and the manpower as they were in bringing them together. S. BERRY, 'Debate sobre', cit. p. 72.

⁵⁰ During the 1920s, the Bubis were continually obliged to harvest cacao, as evident from the Decreto in 9/7/1926 (article 1): '*todos los bubis que no sean propietarios de fincas mayores de cinco hectáreas o no estén prestando servicio en casas particulares, se contratarán oficialmente durante los tres meses que dura el periodo de recolección*'. In a letter to the Republic Commissioner, the Ureka mayor-Botuko (Fernando Po) made a claim against the compulsory public works: '*viéndolo así se lo comunicamos a Vuestra Excelencia, que ya no queremos seguir trabajando sino a favor de nuestro Pueblo*' (AGA África G 157).

⁵¹ Proof of this limbo derives from the explanatory preamble of Real Orden 18/3/1927, which was approved in order to mitigate the declaration of caducity of concessions and indicates the following: '*la posibilidad de que unos 1500 propietarios o poseedores, en su mayoría indígenas, puedan verse privados de sus fincas por la declaración de caducidad de peticiones o concesiones no invocadas en el plazo y forma previstos en aquella disposición*'.

limbo permitted them to partly avoid state control, though they were sometimes subject to the payment of taxes.⁵² However, it also rendered them more vulnerable in relation to large-scale landowners and traders, and the local population periodically experienced limitations to access to their lands or products when their activities clashed with the economic interests of settlers.⁵³

The economic relations between settlers and Africans in regard to the land were intense and diverse. Agricultural products, and sometimes timber, were sold to colonial intermediaries with little intervention by the state.⁵⁴ Over time, the same territory became the object of transactions between Africans and colonisers, as the former rented their plots of land to the latter for certain periods of time.⁵⁵ Participation in the colonial economy and the growing interest of the administration in taxing that participation led to the loss of their lands.⁵⁶ This permanent dispossession was one of the recurrent complaints that were more openly expressed during the Republican period (1931–1936).⁵⁷

⁵² The *Jefe del Negociado del Servicio Agronómico*, in a short report from 16/3/1913 on the extension of cultivated lands in the Spanish territories in the Gulf of Guinea, stated the following fact: '*Esta clase de concesiones (las tramitadas por la Inspección de Colonización y el Negociado del Servicio Agronómico que la sustituyó en 1908) figura en el Registro de la Propiedad y contribuye á los gastos públicos. No sucede lo mismo con numerosas fincas de corta extensión, abiertas por negros bubis ó extranjeros en medio del bosque y que carecen de titulación por no haberla solicitado sus dueños. De estas fincas algunas pagan contribución por haber llegado á descubrirlas los investigadores de Hacienda; otras están ocultas y no contribuyen*'. He also specified that the total conceded land was 15,601 hectares in Fernando Po, 249 hectares on the continent, 3,000 hectares from previous concessions and 500 hectares with no concessions (AGA Africa G 152).

⁵³ Report by the *Patronato de Indígenas* on abuses against indigenous, May 1933 (AGA, Africa G 1799, exp.2).

⁵⁴ The Africans' demands often concerned a greater role of the state: '*Pedimos a la autoridad de V.E. una protección ó mejor dicho un privilegio en nuestros productos agrícolas ya que los producimos en muy pequeñas cantidades comparándola con la que rinden los europeos, por contar con mejores medios que nosotros. Así como nuestra aspiración es que se nos establezca un precio fijo ó variable, según presente la balanza comercial*', *Reclamaciones de los Jefes indígenas del Continente español al Comisario de la República de 2/9/1931* (AGA África G 157).

⁵⁵ Report by the *Servicio Agronómico de Guinea* on ways of indigenous collaboration with the Europeans (*sobre formas de colaboración del indígena con el europeo*), 2/3/1945 (AGA Africa G 1944, exp.5).

⁵⁶ One of the more usual abuses was appropriation by Europeans of small African pieces of land. These losses were typically due to the growing indebtedness of the small producers, who were increasingly obliged to pay taxes to the colonial state. This indebtedness prompted many of them to rent their pieces of land to their creditors, who were normally colonialists. In many occasions, they ended up executing their debt against the lands and judicially appropriating them. Report by the *Patronato de Indígenas*, cit., May 1933.

⁵⁷ *Memorium del Alma Indígena*, informe dirigido por Claudio E. Ricardo Burnley al Comisario del Gobierno de la República, 12/8/1931; *Proposiciones de los hijos del país, los bubis*, 28/8/1931, *Aspiraciones y medidas de urgente resolución, presentadas por los elementos indígenas de estos territorios*

The colonial governments regarded these dynamics with a mix of tolerance, impotence and anxiety. On the one hand, for the metropolitan power, European settlers and traders constituted the main sustenance of the economic exploitation of the continent. However, the colonial administration was not a mere representative of the settlers' interests and pursued other objectives, such as the control of the economic exchange or the social order. To these ends, the administration deemed it necessary to limit the freedom of the African population as well as some of the abuses that the settlers committed against them.

A key instrument of these politics was the definite consolidation of the distinction between indigenous and Europeans and the consequent limitation of the former's capacity to act. As previously illustrated, the 1904 regulation of land property required the participation of the 'competent authority' in any act that implicated the dispossession of indigenous collective property. In the 1920s, these limitations were extended to any type of property, and a 1926 royal decree submitted the indigenous to the tutelage of certain colonial institutions which would supply their juridical capacity 'to the effects of transmission, charge and inscription of the real estates'.⁵⁸

The juridical minority and incapacity of the colonisers was definitively sanctioned in 1928 with the approval of the *Patronato de Indígenas* statute,⁵⁹ which referred to an institution that was created in 1904 but had maintained a low profile until this moment.⁶⁰ The new regulation forbade indigenous participation without the *Patronato's* consent in a number of transactions, many of which related to rights over the land. In this way, the state sought to monitor the participation of Africans in the colonial traffic by requiring them to secure tutelage and representation 'to alienate real estate, to contract lendings with real-

al señor comisario de la República para que a su vez sea elevada al gobierno del nuevo régimen, septiembre de 1931 (AGA África G 157). Más vale tarde que nunca, carta de los fernandinos al Presidente de la República, 1931 (AGA África G 1799, exp.2).

⁵⁸ *Real Decreto* 5/5/1926, article 9: the guardian institutions were the *Ministerio Fiscal* (Attorney General), the *Curador Colonial* or his Delegates, and the *Patronato de Indígenas*. A year later, a *Decreto* of 21/6/1927 punished the transmissions of 'indigenous' property to non indigenous persons' without the intervention of the *Juez de Primera Instancia* (examining magistrate) or the Subgobernador (sub-governor).

⁵⁹ *Real Orden* 17/7/1928.

⁶⁰ *Real Decreto* 11/7/1904 approving the *Estatuto Orgánico*, article 34.

estate guarantee, to contract on real estate, to appear in judgment, to assume obligations of personal character' of a certain quantity.⁶¹

While the indigenous category was obviously the cornerstone of this system, its definition was challenging in such a complex social context. The 1928 statute did not clearly define the indigenous group; at times, they were referred to as 'the naturals of the country', who were assumed to possess an 'intellectual and moral' incapacity to rule themselves.⁶² In fact, the indigenous category was crossed by a racial criteria: the white could not be indigenous; the Creoles could not cease to be it despite their European style of life, and the Africans from other parts of the coast could not either, even if they were not naturals of Guinea. The second statute that was approved in 1938 explicitly defined them as 'every individual of coloured race'.⁶³

The legal distinction between colonisers and colonised in racial terms created an immediate problem with respect to the Creole elite of Fernando Po.⁶⁴ The need to legally account for this social group, which was also important for the colonisation project, led to the establishment of the figure of *indígena emancipado* (emancipated indigenous). The royal decree that regulated the emancipation was approved at the same time as the statute of the *Patronato de Indígenas*⁶⁵ and declared that 'the indigenous of the Gulf of Guinea Territories who notoriously reveal, by the state of their intellectual and moral culture, to be in conditions to rule their persons and goods by themselves, could be emancipated and obtain therefore the corresponding letter of emancipation' (art.1).

The distinction between citizens and subjects is clearly apparent in the explanatory preamble of this royal decree, which expressly considers the emancipation letter to be the 'title of his/her new state of citizenship'. The category of 'emancipated' was an institutional reflection of the assimilations and civilisation discourse which could satisfy at least the aspirations of the minority

⁶¹ 'Enajenar bienes inmuebles, contratar préstamos con garantía inmobiliaria, contratar sobre bienes inmuebles, comparecer en juicio, contraer obligaciones de carácter personal' J. MIGUEL ZARAGOZA, *Ensayo sobre el Derecho de los pamúes de Río Muni*, IDEA-CSIC, Madrid, 1963, pp. 67-68..

⁶² *Ibídem*.

⁶³ 'Individuos de raza de color'. *Decreto 29&9&1938*, article 6.

⁶⁴ *Real Decreto 17/7/1928*, explanatory preamble: '(T)oda vez que existe entre la población nativa de nuestras posesiones en Guinea una considerable minoría capacitada ya para el ejercicio de los derechos civiles'.

⁶⁵ *Real Decreto de 17/7/1928*.

of Africans who were most resentful of the lack of juridical capacity in the colonial order.⁶⁶ However, this situation was reversible, which precluded total equality between metropolitan and colonial citizens.

The consolidation of the *Patronato* forced revisions of many relations between Africans and European settlers regarding the land, especially with respect to renting contracts.⁶⁷ In 1934, a decree nullified all contracts of administration over indigenous estates that were not authorised by the *Patronato*, though it did not eliminate their existence.⁶⁸ The new institution also assumed the role of a credit entity for Africans,⁶⁹ with the first instance occurring in trials that were generated by conflicts over the land.⁷⁰

Thus, at the end of the 1920s, when the military campaign extended the Spanish presence throughout Río Muni, and Africans increasingly participated in the metropolitan markets, the law attempted to force the colonial society into a rigid dichotomy that limited the legal capacity of the colonised to act. The distinction was justified by the necessity to protect the autochthones from the settlers' greed.⁷¹ However, the distinction was not made to recognise rights but instead to incapacitate participation in the economic and juridical exchange of the colony.⁷²

⁶⁶ The inequality so established and the ambiguity of the criteria for defining the emancipation were denounced by some Africans, as apparent in the claims '*Reclamaciones de los Jefes indígenas del Continente español*', cit. 2/9/1931, where signatories asked for recognition of the emancipation of all black adults (*morenos*) who were able to read and write in Spanish.

⁶⁷ According to the *Patronato de Indígenas*, there were 43 cases in Fernando Po in 1928: '*relación del personal de los poblados de Fernando Poo que tiene fincas arrendadas sin la autorización del Patronato*'.

⁶⁸ Real Orden 21/11/1934.

⁶⁹ In this way, the *Patronato* tried unsuccessfully to monopolise a function that was already accomplished by many particulars. *Informe del Servicio Agronómico*, cit., 2/3/1945; *La Voz de Fernando Po: proposiciones que elevan los Jefes de Poblados de Fernando Po al Gobernador General*, 29/8/1949 (AGA Africa G 1799, exp.2).

⁷⁰ See the records on conflicts collected in AGA Africa G 1799, exp. 4.

⁷¹ This justification was stated clearly by the *Patronato de Indígenas* Secretary General in a report of 20/6/1949 that answered the claims of some village chiefs of Fernando Po: '*Anteriormente a la restricción de la capacidad civil indígena y por ende de la creación del Patronato de Indígenas, vivieron los naturales del país en un régimen de equiparación legal a los europeos y su diferencia de cultura unida a la imprevisión de que comúnmente hacen gala fueron causas de que gran número de individuos de raza de color perdiesen sus propiedades, origen ello de nueva orientación de política colonial restrictiva a la capacidad desde cuyo momento puede el Estado Español vanagloriarse de haber impedido el despojo de la propiedad indígena*' (AGA Africa G 1799, exp. 2).

⁷² In December 1944, the *Ley sobre capacidad civil de los indígenas* was approved as a law on the civil capacity of indigenous that maintained and consolidated the distinction between citizens and subjects.

7. Indigenous agriculture colonisation and the limits of civilisation (1930–1944)

The onset of the 1930s witnessed an aggravation of the recurrent labour shortage on large European plantations. This issue coincided with the worldwide depression cycle that commenced in 1929 as well as international accusations by the League of Nations that claimed the trafficking of workers from Liberia to Fernando Po.⁷³ Finally, the colonial authorities considered the existence of concessions to Europeans who did not cultivate the land to be another problem that restrained the growth of commercial agriculture.⁷⁴

In May 1930, as a response to these developments, the Spanish government suspended all concessions of land for an indefinite period of time.⁷⁵ Two years later, in a ministerial order, small African proprietors who requested less than 20 hectares were exempted from the rule.⁷⁶ This tenancy land was subject to juridical limitations and could not be rented or transferred to 'individuals of white race'. Therefore, the authorities decided to support an already ongoing process amongst the colonial population—that of the conversion of the colonised into small, autonomous producers—and the settlers' colonisation, which was constantly in need of workers, was restrained.⁷⁷

⁷³ I. K. SUNDIATA, *From Slaving*, cit., pp. 143-144: 'The League of Nations condemned internal pawning and forced portorage in Liberia. Curiously, it did not address the issue of forced labor on Fernando Po'.

⁷⁴ El Real Decreto de 5/5/1926 consideraba caducadas las concesiones que no cumplieran los requisitos legales. La Real Orden de 18/3/1927 y el Decreto de 22/6/1927 ampliaban los plazos para la convalidación de las tierras cultivadas. Ver también CORDERO TORRES, *Tratado*, cit.

⁷⁵ Real Decreto 3/5/1930 and Real Orden 21/11/1934.

⁷⁶ Orden Ministerial de 22/4/1932. Despacho 348 de la Dirección General de Marruecos y Colonias al Gobernador General de 22/4/1932 (AGA África G 583, exp.4).

⁷⁷ At the beginning of the Francoist regime, there was a project of a new norm, namely the *Proyecto de ordenación y regimen de la propiedad*, which aimed to raise the prohibition of new concessions. According to the justification by the *Servicio Nacional de Marruecos y Colonias*, the main aim was 'to provide the naturals of the country of...'. The project considered the conversion of colonisers into labourers to be openly pernicious for the economy and legitimacy of the colony, and it committed to their consolidation as farmer-proprietors and the generation of Christian families who were linked to the land. *Servicio Nacional de Marruecos y Colonias, Memoria explicativa del proyecto sobre ordenación y régimen de la propiedad en los Territorios Españoles del Golfo de Guinea*, 20/1/1939 p.15 (AGA África G 1891, exp.2). Informe del Jefe del Servicio Nacional de Marruecos y Colonias de 24/1/1939; Informe del Ministerio de Agricultura, sin fecha (AGA África G 1931, exp.2). Informe del Servicio Nacional de Política y Tratados de 18/2/1939; Informe

The Spanish government, which was liberal-democratic during the Republican period (1931–1936), recognised the Africans as advantaged agricultural colonisers. Since they tended to their lands personally or in the context of familiar relations, they were not affected by the secular lack of labourers and did not cease their land cultivation. However, most of these producers could accomplish neither with the new rules on concessions, and they continued to clear their estates independently of the colonial law.⁷⁸ The new administrative plan to consolidate the Africans as small familiar farmers was not necessarily shared by the most prosperous farmers amongst them, who also periodically demanded more expansive facilities for contracting labourers or accumulated lands to rent to large producers.⁷⁹ Ultimately, the latter would be the primary beneficiaries of the suspension of concessions, as they were freed from the competition with new settlers for their workforce.⁸⁰

The legal situation was maintained until the mid-1940s, at which time the Francoist regime (1936–1975) was in power.⁸¹ The Spanish Civil War and the Second World War strengthened ties with metropolitan markets and initiated a period of an authoritarian regime in the metropole. During this era, a network of major Spanish capitalist interests definitively displaced Creole and mid-size landowners in the colony, and '[s]tatist economic policies, along with oligopolistic manipulation of cocoa and coffee prices, assured invested capital a handsome return'.⁸² Furthermore, in these years of European wars, the obligation

del Ministerio de Industria de 6/3/1939; Informe del Ministerio de Agricultura de 3/5/1939 (AGA África G 1869).

⁷⁸ Servicio Nacional de Marruecos y Colonias, *Memoria explicativa*, cit., 20/1/1939

⁷⁹ Many small farmers complained about the difficulties of contracting labourers through the *Curaduría Colonial*. *Proposiciones*, cit., 28/8/1931; *Más vale tarde que nunca*, cit. 1931. Ver también *Quejas presentadas por los primeros Jefes indígenas naturales y vecinos de esta Demarcación* (Santa Isabel), 12/6/1942 (AGA África G 1913, exp.6); *Solicitudes de los jefes de la Demarcación de Niefang*, sin fecha (AGA África G 1913, exp.6); *La Voz de Fernando Po*, cit. 29/8/1949.

⁸⁰ The report *Memoria explicativa*, cit. 20/1/1939 expressed worry for the consolidation of agricultural oligopolies in the colony under the possession of a few major owners.

⁸¹ On the colonial system in the Spanish Territories in the Gulf of Guinea during Franco's regime, see A. CAMPOS SERRANO, *De colonia a estado: Guinea Ecuatorial, 1955-1958*, Centro de Estudios Políticos y Constitucionales, Madrid, 2002.

⁸² I. K. SUNDIATA, *From Slaving*, cit. p. 179.

of Africans to work on infrastructure and large colonial plantations intensified through the widespread imposition of obligatory service.⁸³

The moratorium on concessions was introduced by the Regulation on Concessions (1944) and the Law on Property Regime (1948).⁸⁴ The new norms established two forms of indigenous property: collective and individual. The earlier regulation of 1904 considered only the property of 'tribes, villages and familiar groups' to be indigenous; the new norms deemed such property 'collective' along with that of other figures, such as agricultural co-operatives or indigenous associations, reserves or familiar estates. This collective indigenous property was considered inalienable.

The category of individual indigenous property was intended to regulate the many small holdings that were disseminated throughout the colony and distinguish them from the settlers' estates. The property on these lands was considered to be derived from the state concession. This regulation did not aim to convert the Africans into small landowners, which was already the reality, as much as to control this process and channel its development. Therefore, it established a limit of four hectares for these concessions. Moreover, the owner—indigenous, not emancipated—should cultivate the land personally and was forbidden from renting to any European or emancipated African. Such property was not inalienable; the owner's capacity to act was limited by his or her indigenous condition, which rendered it necessary for the *Patronato de Indígenas* to intervene in the selling, renting or granting of any right on these lands.⁸⁵

Thereby, small farmers were protected and granted access to their land, while the process of accumulation in African hands and the appearance of a small landowners' class was simultaneously prevented.⁸⁶ The new norm was based

⁸³ This situation was denounced by a series of claims that were directed to the general governor in 1942 on the occasion of a visit of inspection to Río Muni. *Carta de los Jefes de la Demarcación de Río Benito* de 9/6/1942; *Carta de la Tribu Baney* de 9/6/1942; *Quejas presentadas por los primeros Jefes indígenas*, cit. 12/6/1942 (AGA Africa G 1913, exp.6).

⁸⁴ *Reglamento sobre concesiones*, 1944 and *Ley sobre el Régimen de Propiedad*, 1948. J. MOLINA ARRABAL, *Propiedad territorial en Guinea*, in *Labor de España en África*, Barcelona, Alta Comisaría de España en Marruecos, 1946; J. MIGUEL ZARAGOZA, *Ensayo*, cit.

⁸⁵ These limitations were continuously objected to by Africans. See *La voz de Fernando Po*, cit., 19/8/1949.

⁸⁶ *Informe del Servicio Agronómico de Guinea*, cit., 2/3/1945 (AGA Africa G 1944, exp.5); *Informe del Secretario General del Patronato de Indígenas*, cit. 20/9/1949.

on – and reinforced – the distinction between indigenous and Europeans. Its first article clearly establishes this inequality in juridical terms: while Spanish and emancipated indigenous were regulated by the metropolitan's codes, 'the rest of indigenous would be ruled by the colonial dispositions that affected them, by their respective customs' (if not contrary to Catholic morals) and 'by the general principles of law'.⁸⁷

At this point, the reference to custom served more to limit the rights of the colonised than to respect the ways of access and use of land, which were well established in the regulation itself. This purpose was especially clear with regard to the so-called *patrimonio familiar* (familiar estate): with this figure, the colonial government acquired an instrument with which to perform truly colonial social engineering. The familiar estates could secure larger extensions compared to the individual properties, and they were granted multiple financial and other benefits. The aims were to take advantage of the non-salaried familiar work in the colonial economy as well as to make Africans adopt certain Spanish ways of life.

Indeed, a familiar estate was conceded to family heads 'with experience with the crops' with a preference for those who were 'canonically married, older than 18, living with [their] wife(s) and legitimate children, and of irreproachable conduct', those with a 'bigger number of children', especially male children, and those with 'better reports of conduct, religiosity, patriotism and moral habits' (art. 24). This whole program of civilisation tried to transform the familiar and social forms in existence in Guinea to promote the establishment of families as they were considered in the Spanish Civil Code (art. 31). The gathering of some of them would form model villages called *cotos familiares* that were directed by a *sindicat* and contained a 'chapel, schools and warehouses' (art. 41).

Nevertheless, the attempt to generate a society that would match the ideals of colonial authorities did not imply the application of the property general regime to these estates, as the legal limits were reproduced: since a familiar estate could only be inherited *en bloc* by the successor of the family head or by another indigenous family unit, its partition and alienation was extremely difficult (arts. 36–40). These circumstances resembled the old juridical culture of the Europeans

⁸⁷ '(L)os demás indígenas se regirán por las disposiciones coloniales que les afecten, por sus costumbres respectivas en cuanto se acrediten debidamente y sean conformes con la moral católica, y, en defecto de ellas, por los principios generales del derecho'. *Ley sobre Régimen de Propiedad*, 1948, art. 1.

and figures such as the 'entailed estate' more than the contemporary capitalist culture or that of Africans.⁸⁸

In spite of this ambitious colonisation and civilisation program, the agricultural and social development of the colony did not prosper along the lines that were established by the new property regime because few Africans decided to assume the familiar estates as their way of life and tenancy of land. Only the collective property of villages continued to be slowly delimited on the island and the continent. Whereas the individual indigenous property was gradually regulated and registered in Fernando Po, the state did not have yet the capacity in the mid-1950s to know and oversee most of the small African lands in Río Muni,⁸⁹ and the renting of lands to wealthy settlers continued.⁹⁰ Therefore, agricultural colonisation by colonisers persisted for long time and independently of colonial law with the tacit toleration of the colonial government. The co-operative movement, which was prized by some colonial officials, did not have much success either on the island or continent.⁹¹ Hence, the administrative effort concentrated on fixing the prices and regulating the local markets in which small producers, especially on the continental part, sold their crops.⁹²

The different social engineering projects that were expressed in the colonial law did not shape the colonised society as intended. Still, African social forms

⁸⁸ This was recognised in a report by the Industry Ministry, *Informe del Ministerio de Industria*, cit. 6/3/1939.

⁸⁹ GOBIERNO GENERAL DE LOS TERRITORIOS ESPAÑOLES DEL GOLFO DE GUINEA, *Memoria de la labor realizada en el periodo 1949-1955*, Madrid, 1955, p. 134.

⁹⁰ In a governor general's letter to the president of *Patronato de Indígenas* of 29/12/1949, he insisted on the prohibition of leasing of plots without a property title between indigenous and Europeans (AGA África G 1799).

⁹¹ *Informe del Presidente del Patronato de Indígenas, La política del Patronato de Indígenas en el Distrito Continental en relación con la actuación de su filial y la cooperación indígena*, 20/6/1950 (AGA África G 1799).

⁹² *Orden 22/7/1942 sobre mercados de productos del país*. The aims of the markets were explained by the general government in a note: 'con el objeto de evitar que algunos europeos obtengan ganancias excesivas a costa del indígena comprando a estos sus productos a bajo precio con lo cual no se estimula al individuo para que trabaje ni produzca. Además, pretende la Orden conseguir una atracción de los productos y los habitantes de las colonias vecinas para abastecer y repoblar la nuestra', *Nota del Gobernador General a la Dirección General de Marruecos y Colonias*, 24/7/1942 (AGA África G 1944, exp. 5). According to a report by the *Servicio de Agricultura*, the markets never achieved effectiveness in Fernando Po, where buyers bought cash down in the places of production. *Informe del Servicio Agronómico de Guinea*, cit. 2/3/1945. See also J. NOSTI, *Notas geográficas, físicas y económicas sobre los Territorios Españoles del Golfo de Guinea*, IDEA-CSIC, Madrid, 1947, p. 86.

underwent important transformations in the context of violence from Europeans in backing their ‘mission of civilisation’ and the increased commercialisation of agricultural products. The constant reference to the uses and customs of the colonised and the changing economic and social contexts positioned social norms as a subject of continuous conflict and debate.⁹³ The new conditions of access to the land and the possibilities to consolidate an individual inheritance altered social hierarchies and inequalities as well as gender relations.⁹⁴ The autonomy that certain women acquired through their participation in the commercial economy and the resistance of some men were reflected in numerous judicial cases in front of the colonial tribunals. Marriage and inheritance questions were especially conflictive and provoked intense debate over the applicable norms in a context of unceasing juridical pluralism.⁹⁵

At the end of the period under consideration, the colonial agronomy service engineer Jaime Nosti offered data that evidence the situation of commercial agriculture and their distribution according to the type of producer, namely European or indigenous. The data, which are presented for interpretation by the reader, insightfully illustrate some of the previously highlighted dynamics. Notably, Nosti neglected to acknowledge that the European estates included some that were owned by emancipated indigenous. The classification by the engineer indicates how the distinction between the two categories of citizens and subjects was already consolidated in the colonial system.⁹⁶

⁹³ As an example of the conflicts around the custom, see that posed in December 1934 to the *Patronato de Indígenas*, in which a widow claimed the Bubi custom and her brother-in-law the inscription in the Land Registry of the colony. In this case, the right of the widow prevailed (AGA África G 1799). See S. BERRY, *No Condition*, cit.

⁹⁴ C. ESTEVA FABREGAT, Algunos caracteres del sistema de propiedad ‘fang’, *Revista de Trabajo*», 5, 1964.

⁹⁵ See the (usually incomplete) records in the *Tribunal Indígena de la Administración Territorial de Santa Isabel*, 1939-1962 (AGA África G 2258). In the *reclamaciones de los Jefes indígenas del Continente español al Comisario de la República*, cit., 2/9/1931, a group of chiefs of Río Muni expressed their worries regarding the access of women to more favourable metropolitan norms: ‘Que los Jefes indígenas resuelvan las controversias que surjan entre los cónyuges de su clase según costumbre y tradición del país’.

⁹⁶ J. NOSTI, *Notas geográficas, físicas y económicas sobre los Territorios Españoles del Golfo de Guinea*, IDEEA-CSIC, Madrid, 1947, chap. VI.

FERNANDO PO

Fincas indígenas	concedidas	explotadas directam.	803	4,510 h ^{as}
		arrendadas	182	1,189 h ^{as}
	sin conceder	explotadas directam.	758	3,950 h ^{as}
		arrendadas	23	162 h ^{as}

Conclusion

The trajectories of colonial law that have been analysed in this paper are reflective of the permanent effort of the state to model social relations in continuing transformation. The norms that were approved for the Spanish colony shaped successive understandings of the European mission in Africa. From the simple defence of a few settlers who had to share the island with other population and social forms that they did not control, up to the creation of a new society made up of monogamous and Christian families converted into productive units, a radical social transformation created a new agricultural fabric governed by big foreign investors.

These hesitations in the colonial plans—and their successive failures—demonstrate the extent to which the colonial society and the processes that crossed it were far more difficult to mould than the European mission of civilisation had presupposed. The initial settlement colonisation on the basis of the appropriation of lands and conversion of Africans into semi-free labourers was confronted with the progressive participation of the latter in the commercial economy as small cocoa or coffee producers, land renters or timber sellers. The Guinean colonisation was characterised by the (sometimes conflicting) articulation of European and Creole settler colonisation that was founded on the occupation of land, the intensive use of an immigrant workforce and the agriculture of autochthon small landowners, who largely used family work and had access to the market only through European agents.

The law responded to the economic activity of Africans in two complementary manners. Specifically, it attempted to regulate and monitor access to land through norms on property while simultaneously limiting the juridical capacity

Fincas europeas	de españoles	445	24,079 h ^{as}
	de extranjeros	138	8,438 h ^{as}
	(todas concedidas salvo 6 fincas, 79 h ^{as})		
RÍO MUNI			
Fincas indígenas	concedidas	100	5,301 h ^{as}
	sin conceder	8,985	12,220 h ^{as}
Fincas europeas	de españoles	79	10,675 h ^{as}
	de extranjeros	8	678 h ^{as}
	superficie forestal explotada		102,475 h ^{as}

of most Africans to participate in the colonial traffic on equal terms. The juridical consideration of Africans as indigenous who submitted to their uses and customs and reserved no reclaimable individual rights also allowed time to impose duties on them and control their participation in the process of economic exploitation. However, the juridical incapacity of Africans and subsequent distinction between citizens and subjects were not structures of colonial domination from the beginning of the penetration; rather, they were part of a process which consolidated as the state control encompassed an increasing number of social ambits, and the Africans tried to take advantage of the social and economic opportunities that were offered by the colonial presence.

The distinctions between colonisers and colonised, particulars and indigenous, and citizens and subjects obscured a broad diversity of interests and power relations. In this context, the state often played an intermediary role by frequently supporting the settlers in their search for cheap and disciplined workers while also granting the autochthon sectors some protection from the harshest aspects of colonial capitalism. Moreover, the state constantly sought to control the rapid social transformations that were generated by the colonial impact.

Colonialists ultimately did not manage to impose their ideal forms of political and juridical organisation in Africa, which was due to not only the colonisers' resistance to consider the Africans as equals but also their inability to dominate the entire process of conquest, government and social engineering. The Africans' reactions to the invasion, the divergence of interests of the European groups and the scarcity of means were the main conditions of colonial law in the making. As a whole, the colonial state and its law were shaped by a framework of contradictions between its diverse objectives, which included social transformation, economic exploitation and political order, and in the midst of social processes and actions of the people.